

CHEVRON U.S.A., INC.

IBLA 83-250

Decided June 30, 1983

Appeal from decisions of Nevada State Office, Bureau of Land Management, rejecting oil and gas lease offer N-18274 and partially rejecting oil and gas lease offer N-18277.

Affirmed.

1. National Park Service Areas: Generally--Oil and Gas Leases:
Applications: Generally--Oil and Gas Leases: Lands Subject to

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and the National Park Service has declined, under 43 CFR 3566.3, to give consent to issuance of the lease.

APPEARANCES: A. R. Boehm, Jr., Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Chevron U.S.A., Inc. (Chevron), appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated November 15, 1982, which rejected in part over-the-counter oil and gas lease offer N-18277. Chevron also appeals from a Nevada State Office decision dated November 17, 1982, which rejected all of over-the-counter oil and gas lease offer N-18274. BLM's rejections were based on the fact that all the lands included in oil and gas lease offer N-18274 and certain lands included in offer N-18277 lie within the boundary of the Lake Mead National Recreation Area (LMNRA). ^{1/} The decisions stated that the National Park Service (NPS) administers the lands within LMNRA and that NPS had recommended against oil and gas leasing for the lands. NPS did consent to issuance of a lease for the remaining portion of N-18277, subject to special stipulations.

^{1/} The lands described in N-18274 include all of secs. 19, 20, and 21, T. 17 S., R. 68 E., Mount Diablo meridian, Clark County, Nevada. Offer N-18277 includes all of secs. 7, 8, and 9, T. 17 S., R. 68 E., Mount Diablo meridian, Clark County, Nevada. In its decision of Nov. 15, 1982, BLM rejected all of secs. 8 and 9 in offer N-18277.

In its decision dated November 15, 1982, BLM set forth the following information regarding the partial rejection of N-18277:

Portions of Section 8 run parallel to the lakeshore of Lake Mead and provide scenic views of the area. Section 9 is bisected by the historic St. Thomas Road. This access road is used by local residents and tourists for lakeshore fishing, beach camping and recreational activities. Considerable portions of Section 9 lie within the high water level of Lake Mead itself.

Therefore, the Park Service concludes that leasing of these lands would present significant adverse effects to the enjoyment of tourists visiting this scenic recreational area.

BLM explained the reasons for its rejection of N-18274 in its decision of November 17, 1982, as follows:

All three sections of your offer are bisected by the scenic Northshore Road, Highway 40 and the historic St. Thomas access road. These roads are heavily traveled by tourists to and from the well known Valley of Fire and Overton Beach recreational areas. The Park Service Report concludes that oil and gas leasing in this area of high recreational values would have adverse effects to the aesthetic enjoyment of the visiting public.

On appeal, appellant asserts that other than the mention of an NPS 'Report,' BLM does not mention any data, environmental assessment, environmental impact reports, or other studies that either make up this report or are independent of this report as a basis for the rejection of these offers. Appellant points out that a BLM decision rejecting an oil and gas offer must contain the reasons for the rejection, data to support the decision, and a determination that special stipulations would be inappropriate to protect the public's aesthetic and scenic values. Appellant urges that BLM accept the lease offers with stipulations needed to protect the public's other uses of public lands.

Appellant contends that BLM abused its discretion in rejecting the lease offers without consideration of stipulations to protect the public's interest. Appellant relies on Robert P. Kunkel, 41 IBLA 77 (1979), a case with a similar factual situation, in which the Board remanded the case to BLM for fuller consideration of the competing interests involved in issuing the lease.

On December 21, 1981, the Department published regulations relating to oil and gas leasing in LMNRA. 46 FR 62938 (Dec. 21, 1981). Those regulations provided in relevant part:

§ 3566.2 Lands to which applicable.

§ 3566.2-1 Boundary maps.

The area subject to the regulations in this subpart are those areas of land and water which are shown on the following

maps on file and available for public inspection in the Office of the Director of the National Park Service and in the Superintendent's Office of each area. The boundaries of these areas may be revised by the Secretary as authorized in the acts.

(a) Lake Mead National Recreation Area--The map identified as 'boundary map, 8360-80013A, revised December 1979.'

43 CFR 3566.2 (46 FR 62043 (Dec. 21, 1981)).

§ 3566.3 Consent and consultation.

Any lease or permit respecting minerals shall be issued or renewed only with the consent of the Regional Director, National Park Service. Such consent shall only be granted upon a determination by the Regional Director that the activity permitted under the lease or permit will not have significant adverse effect upon the resources or administration of the area pursuant to the authorizing legislation of the area. Any lease or permit issued shall be subject to such conditions as may be prescribed by the Regional Director to protect the surface and significant resources of the area, to preserve their use for public recreation, and subject to the condition that site specific approval of any activity on the lease will only be given upon a concurrence by the Regional Director. All lease applications received for reclamation withdrawn lands shall also be submitted to the Bureau of Reclamation for review.

43 CFR 3566.3 (46 FR 62044 (Dec. 21, 1981)). Thus, the regulations prevent BLM from granting leases in LMNRA without NPS's consent. Appellant's reliance on Robert P. Kunkel, *supra*, issued prior to this change in the regulations, is misplaced.

[1] LMNRA was established by the Act of October 8, 1964, 16 U.S.C. § 460n (1976). The Secretary of the Interior is directed to administer the area for the general purposes of public recreation, benefit, and use in a manner that will preserve, develop, and enhance the recreation potential and in a manner that will preserve the scenic, historic, scientific, and other important features of the area. Mineral leasing may be permitted only to the extent that it will not be inconsistent with the recreational use. 16 U.S.C. § 460n-3 (1976). The regulation at 43 CFR 3566.3 provides that oil and gas leases within that area shall be issued only with the consent of the Regional Director, NPS, after his determination that the lease will not have a significant adverse effect upon the administration of the area pursuant to its authorizing legislation. S. Dawson, 73 IBLA 301 (1983); Frances Kunkel, 69 IBLA 205, 206 (1982).

Unless the Mineral Leasing Act or a withdrawal specifically provides otherwise, lands withdrawn for a specific purpose are available for oil and gas leasing if the issuance of a lease will not be inconsistent with or materially interfere with the purpose for which the land is withdrawn. Chevron U.S.A., Inc., 52 IBLA 278 (1981). Here, where NPS has declined to give consent to issuance of a lease, based on a reasonable analysis of the problem,

BLM may not issue an oil and gas lease for the lands sought within LMNRA. Therefore, an oil and gas lease offer is properly rejected where the lands sought are within LMNRA and NPS has declined, under 43 CFR 3566.3, to give consent to issuance of the lease. S. Dawson, *supra*; Frances Kunkel, *supra* at 209; De Ann T. Gaeth, 69 IBLA 79 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Nevada State Office are affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

September 26, 1983

IBLA 83-250	:	N 18274, 18277
74 IBLA 92	:	
	:	
CHEVRON U.S.A.	:	Oil and Gas

ERRATA

The following changes are made to the above-captioned decision.

Citations to 43 CFR 3566.3 on 74 IBLA pages 92 (headnote 1.), 94 (last full paragraph), and 95 are changed to citations to 43 CFR 3109.5-2(e) (1982) (now 43 CFR 3109.2(b)).

Pages 74 IBLA 93-94 are revised to read as follows:

"On December 21, 1981, the Department published regulations relating to oil and gas leasing in LMNRA. 46 FR 62043 (Dec. 21, 1981). Those regulations provided in pertinent part:

3109.5-2(e) National Park Service areas. Any lease or permit respecting minerals shall be issued or renewed only with the consent of the Regional Director, National Park Service. Such consent shall only be granted upon a determination by the Regional Director that the activity permitted under the lease or permit will not have significant adverse effect upon the resources or administration of the area pursuant to the authorizing legislation of the area. Any lease or permit issued shall be subject to such conditions as may be prescribed by the Regional Director to protect the surface and significant resources of the area, to preserve their use for public recreation, and subject to the condition that site specific approval of any activity on the lease will only be given upon a concurrence by the Regional Director. All lease applications received for reclamation withdrawn lands shall also be submitted to the Bureau of Reclamation for review.

43 CFR 3109.5-2(e), supra. Thus, the regulations prevent BLM from granting leases in LMNRA without NPS's consent. Appellant's reliance on Robert P. Kunkel, supra, issued prior to this change in the regulations, is misplaced.'

74 IBLA 95A

The provisions of 43 CFR 3566.3 and 43 CFR 3109.5-2(e) (1982) are identical; both require consent of the National Park Service (NPS) before the Bureau of Land Management may issue a lease in NPS areas. However, the latter regulation applied specifically to oil and gas lease offers, and the former applied more generally to offers to lease other minerals. Since this case concerned an oil and gas lease offer, 43 CFR 3109.5-2(e) (1982) applied and should have been cited.

Anne Poindexter Lewis
Administrative Judge

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